**Template Comments Regarding**

**Sec. 1557 of the Affordable Care Act and Disability**

**Comment Period Closes: 11:59 pm EST August 13, 2019**

Your input on the proposed Sec. 1557 rule is important. Below please find information to help you in forming your own comments in opposition to the proposed changes to the current Sec. 1557 regulations. We encourage you to develop comments that reflect your own experience. **Comments may be submitted to the federal register** [**here**](https://www.regulations.gov/comment?D=HHS-OCR-2019-0007-0001) **by 11:59 pm on August 13, 2019.** You can upload your comments as a Word or pdf file, or enter your comments directly in the text box if you have 5000 characters or less.

* **Write comments in your own words.** The template highlights in yellow are suggestions where you can add your own thoughts and experiences. *Individualize the template language to have the biggest impact.* Describe how the rule impacts you, your family, your community and/or your organization and the people it serves.
* If you have **research, data, or testimonials**, consider including these additional resources as an attachment to ensure that they are included in the administrative record.
* **If you have expertise in an issue area, say so.** It’s helpful to provide context as to why you are weighing in on the proposed rule. Please explain why you are uniquely qualified to offer your thoughts on this matter. As an organization that advocates for disability rights or provides services to people with disabilities, you have credibility!
* **If you have personal experience on the issues, say so.** If you are a person with a disability or are supporting a person with a disability, describe that experience and how the proposed rule would impact you and your family.
* **Feel free to select from the points below, picking as many or as few as you’d like to emphasize**.

**Template Comments – *please modify to reflect your own, unique perspective!***

[Put on your agency letterhead, where appropriate]

[Month XX, 2019]

Roger Severino

Director, Office for Civil Rights

U.S. Department of Health and Human Services

Hubert H. Humphrey Building, Room 509F

200 Independence Avenue SW

Washington, DC 20201

RE: HHS Docket No. HHS-OCR-2019-000, RIN 0945-AA11, Comments in Response to Section 1557 NPRM

Dear Mr. Severino:

[Begin by describing your connection to the issues. Key details could include: your experience as a person with disability or an individual or organization that advocates or works with people with disabilities and their families and your interaction with the healthcare system.] For organizations: [Agency name] is a [describe your organization or experiences] in [your town and state].

I/We appreciate this opportunity to share my/our views on these proposed policy changes in interpreting and enforcing the nondiscrimination provision of the Affordable Care Act (ACA). I/We write to express opposition to the U.S. Department of Health and Human Services (HHS) proposed rule on Section 1557. The proposed rule would cause major harm to people with disabilities and their families and communities; it’s unfair, discriminatory and bad policy for this country. We recommend HHS not finalize this regulation in whole or in part.

Section 1557 and its implementing rules are critical because people with disabilities are routinely discriminated against in the provision of health care. [Describe the barriers and stigma people with disabilities have experienced, and the importance of equal access to health services.] HHS underwent an extensive process to develop regulations for Section 1557, including a Request for Information, proposed rule, and final rule.[[1]](#footnote-0) HHS considered more than 24,875 public comments submitted for the 2016 rule.[[2]](#footnote-1) There is no reason to reopen this rule and ignore the reasoned process HHS has already undertaken.

**[Include any or all of the following paragraphs]**

We request that HHS retain the current definition of a “covered entity.” The proposed rule seeks to radically narrow the scope and applicability of Section 1557, contrary to the plain meaning of the statute. Congress made clear in Section 1557 that if one part of an entity receives federal financial assistance, the entire entity should be covered. It also clearly intended Section 1557 to address discrimination in health insurance. [Please include any instance where a private health plan that has been purchased outside of any exchange has denied coverage of needed services such as therapy for autism or durable medical equipment, or you were required to pay additional fees or high co-pays for needed healthcare.]

We disagree with HHS’ proposal to delete the current requirement that covered entities provide notice, with every significant communication to individuals, that they do not discriminate based on disability or other prohibited grounds; that they provide auxiliary aids and services for people with disabilities, including qualified interpreters and information in alternate formats; and how to obtain those auxiliary aids and services. Without the notice, members of the public will have limited means of knowing that auxiliary aids and services are available, how to request them, what to do if they face discrimination, and their right to file a complaint. As HHS itself notes in the proposed rule, “repealing the notice of nondiscrimination requirement may result in additional societal costs, such as decreased utilization of auxiliary aids and services by individuals with disabilities due to their reduced awareness of such services.”[[3]](#footnote-2) We agree, and therefore object to removing this requirement. [Please describe anytime someone could have used an auxiliary aid or service but didn’t know they could ask, or they knew and asked but were still refused, or they had a family member who is aging or has LEP who could have used large print or hearing assistance but didn’t know to ask.]

HHS should retain strong, clear language prohibiting insurance companies from discriminating on the basis of race, color, national origin, sex, age, or disability in a number of areas, including marketing plans, designing benefits, coverage claims, or imposing additional costs. These protections are especially important for people with disabilities and those with serious or chronic conditions. Eliminating this regulatory provision could result in health insurers illegally excluding important benefits, designing their prescription drug formularies in a way that limits access to medically necessary care, or cherry-picking healthier enrollees through marketing practices. It may make it harder for people who experience discrimination to enforce their rights through administrative and judicial complaints.

We urge HHS to retain the language in the 2016 Final Rule regarding effective communication for individuals with disabilities. In the proposed rule, HHS changes the definition of auxiliary aids and services, and does so without explanation. HHS claims to import the definition of auxiliary aids and services from the regulations for Title II of the Americans with Disabilities Act, but deletes “[a]cquisition or modification of equipment and devices; and [o]ther similar services and actions” from the list of examples of aids and services. This could create confusion, as it takes what is now a clearly illustrative list and implies that it is exhaustive. HHS should retain the definition of “auxiliary aids and services” from the 2016 final rule. Furthermore, we oppose any proposal to exempt entities with 15 or fewer employees from the requirement to provide effective communication. In some areas of the country, this could effectively bar access to many providers, including specialists who are essential to providing high quality health care to individuals with chronic health conditions. [We encourage you to insert any additional information or anecdotes about the importance of physical accessibility and effective communication. We also encourage you to note if you have a medical provider who is in a small office, with 15 or fewer total employees.]

We oppose HHS’ proposal to delete regulations that prohibit discrimination on the basis of association with a protected class.[[4]](#footnote-3) This will create uncertainty and confusion regarding the responsibilities of providers and the rights of persons who experience discrimination, and inconsistencies with other regulatory requirements that entities are subject to, including the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

We also believe that HHS incorrectly limits the remedies available under Section 1557 in the proposed changes to § 92.301 (newly designated § 92.5). One of the goals of Section 1557 was to build and expand on prior civil rights laws such that individuals seeking to enforce their rights would have access to the full range of available civil rights remedies and not be limited to only the remedies provided to a particular protected group under prior civil rights laws. This is why Section 1557 expressly provides individuals access to any and all of the “enforcement mechanisms provided for and available under” the cited civil rights statutes, regardless of the type of discrimination. The proposed rule makes it harder and more complicated to address prohibited discrimination. HHS should retain current § 92.301.

HHS seeks comments on a number of other proposed changes which we oppose. The Sec. 1557 final rule was the subject of a lengthy development process that included substantial public input and comment. Revisiting all of the previously settled issues in the final rule, particularly those far beyond the justification offered in the NPRM, creates uncertainly and further weakens finality. HHS should not change the current requirements to provide “reasonable modification,” and import exemptions for “undue hardship,” The substitute language is from regulations related to employment, and is unnecessary, ill-fitting, and inappropriate for a health care context.[[5]](#footnote-4) Exemptions should not exist regarding elevators in multistory buildings, as this is likely to severely limit access to necessary medical care.[[6]](#footnote-5)Last, we note that people with disabilities, like all people, have intersectional identities, and that the anti-discrimination mandate in 1557 is designed to prohibit discrimination based on a single identity as well as the intersection of two or more identities such as race and disability, age and disability, or sex and disability. The proposed rule seeks to strip protections from persons with limited English proficiency, LGBTQ individuals, and women. We stand in solidarity with other marginalized groups in objecting to this proposed rule. [You may want to include any additional information other harmful impacts that you, your family or the people you serve would face accessing health care under the proposed rule,]

Thank you for the opportunity to provide comments on the proposed rule. We urge HHS not to finalize these changes. If you have questions about our comments, please contact [insert contact person’s name, email and/or phone number].

Sincerely,

1. U.S. Dep’t of Health & Human Servs., *Request for Information Regarding Nondiscrimination in Certain Health Programs or Activities*, 78 Fed. Reg. 46558 (Aug. 1, 2013); U.S. Dep’t of Health & Human Servs., *Nondiscrimination in Health Programs and Activities* (Notice of Proposed Rulemaking), 80 Fed. Reg. 54172 (Sept. 8, 2015); U.S. Dep’t of Health & Human Servs., *Nondiscrimination on the Basis of Race, Color, National Origin, Sex, Age, or Disability in Health Programs or Activities Receiving Federal Financial Assistance and Health Programs or Activities Administered by the Department of Health and Human Services or Entities Established under Title I of the Patient Protection and Affordable Care Act*, 45 C.F.R. Part 92, 81 Fed. Reg. 31376 (May 18, 2016)(hereinafter “2016 Final Rule”). [↑](#footnote-ref-0)
2. 81 Fed. Reg. 31376. [↑](#footnote-ref-1)
3. 84 Fed. Reg. 27882-83. [↑](#footnote-ref-2)
4. 45 C.F.R. § 92.209. [↑](#footnote-ref-3)
5. 84 Fed. Reg. 27868 [↑](#footnote-ref-4)
6. 84 Fed. Reg. 27867 [↑](#footnote-ref-5)